

FILED

JUN 9 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ROBERT VARDANYAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71605

Agency No. A75-695-362

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 4, 2006
Pasadena, California

Before: LAY^{**}, KLEINFELD, and SILVERMAN, Circuit Judges.

Robert Vardanyan, an Armenian citizen, petitions for review of the Board of Immigration Appeals order summarily affirming the Immigration Judge's (IJ) denial of his applications for asylum, withholding of removal, and relief under the

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Convention Against Torture. We have jurisdiction pursuant to 8 U.S.C. § 1252 and grant the petition.

We review adverse credibility determinations for substantial evidence. *Shah v. I.N.S.*, 220 F.3d 1062, 1067 (9th Cir. 2000).

The IJ offered several reasons for finding Vardanyan not credible. First, the IJ doubted why Vardanyan would deny to Armenian government agents that he had met with a high-ranking official to discuss illicit killings at his military base when it was clear that the agents already knew of the meeting. The IJ's rejection of this account, however, rested upon speculation about how a persecuted person would behave while being detained and interrogated by secret police. An adverse credibility finding cannot rest on the fact, even if it *is* a fact, that a person lied to interrogators under such circumstances. *See Turcios v. I.N.S.*, 821 F.2d 1396, 1400-01 (9th Cir. 1987) (holding that misstatements must be evaluated "in the light of all the circumstances of the case" and rejecting an adverse credibility finding based on misrepresentations made by petitioner out of fear of persecution). Further, even though Vardanyan, when asked by the IJ why he lied to interrogators, stated that he "couldn't lie," it is unclear from the record whether this explanation was itself a lie or simply an inartful response hampered by obvious language difficulties.

Second, the IJ disbelieved Vardanyan because he testified on the one hand that he held an important job in the military, yet claimed on the other hand to be the victim of persecution. However, the IJ did not address Vardanyan's explanation that specialized training and experience rendered him uniquely qualified for the position, notwithstanding the hatred he engendered.

Third, the IJ disbelieved Vardanyan's claim that government agents who had suspected him of compromising military secrets nevertheless allowed him to leave a hospital without restraint. However, the IJ's disbelief of this testimony was based on "personal speculation about the security practices and effectiveness of the local officials." *Ge v. Ashcroft*, 367 F.3d 1121, 1126 (9th Cir. 2004).

Fourth, the IJ found Vardanyan incredible because of inconsistencies in his account of why he had not maintained contact with his mother as well as his failure to produce any of the critical articles she allegedly authored. In this instance, the record supports the IJ's skepticism. However, Vardanyan's relationship with his mother does not go to the heart of his claim for asylum and other relief. *See Singh v. Ashcroft*, 362 F.3d 1164, 1171-72 (9th Cir. 2004) (holding that a stated reason for disbelieving a petitioner must be significant and go to the heart of petitioner's claim).

In sum, the IJ's adverse credibility finding is not supported by substantial evidence. We therefore grant the petition for review and remand to the agency to determine whether, based on Vardanyan's testimony, he is entitled to relief.

Arulampalam v. Ashcroft, 353 F.3d 679, 689 (9th Cir. 2003).

PETITION GRANTED; REMANDED.